

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JESUS CARRETE,

Plaintiff,

v.

No. 21-cv-0678 SMV/JHR

NEW MEXICO RACING COMMISSION,

Defendant.

ORDER FOR SUPPLEMENTAL BRIEFING AND SETTING ORAL ARGUMENT

Location: AT&T Teleconference Line
Call-in number: 888-363-4734
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Date and time: November 15, 2021, at 9:00 a.m. MST

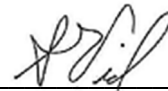
Matter to be heard: Defendant's Motion to Dismiss [Doc. 3]

THIS MATTER is before the Court on Defendant's Motion to Dismiss in Lieu of Answer for Failure to Comply with Rule 1-075 NMRA [Doc. 3], filed on July 28, 2021. Plaintiff responded on August 9, 2021. [Doc. 8]. Defendant replied on August 23, 2021. [Doc. 10]. Having reviewed the record, the briefing, and being otherwise fully advised in the premises, the Court will order supplemental briefing on (1) whether the Tenth Circuit recognizes the implication of a property or liberty interest in the disqualification of two horses from a single race and the suspension of Plaintiff's license for 15 days, *see Castanon v. Cathey*, 976 F.3d 1136, 1141 (10th Cir. 2020) ("The owners' arguments fail on the merits because the state racing officials did not deprive the owners of a property or liberty interest."); and (2) whether Defendant New Mexico Racing Commission is a "person" under § 1983, *see* 42 U.S.C. § 1983; *Will v. Mich. Dep't of State Police*, 491 U.S.

58, 71 (1989) (construing a suit against the “Michigan Department of State Police” as a suit against the State of Michigan and finding that a State is not a “person” under § 1983); *Conner v. Rodriguez*, No. 10-cv-0512 WJ/WDS (D.N.M. Sept. 15, 2010), ECF. No. 20 (dismissing New Mexico Department of Safety because it was immune from suit under § 1983).

IT IS ORDERED that Defendant must file supplemental briefing on the above issues no later than **October 8, 2021**. Plaintiff must file his response no later than **October 22, 2021**. Defendant may reply no later than **November 5, 2021**. At the hearing, the Court will hear oral argument on (1) whether Plaintiff’s failure to follow Rule 1-075 precludes his present claims; (2) whether the Tenth Circuit recognizes a property or liberty interest that would be implicated by the facts alleged in the Complaint; and (3) whether Defendant is a “person” under § 1983.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent